

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

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10 SOUNDVIEW INSURANCE AGENCY,  
11 INC., and TONI CONTI,

12 Plaintiffs,

13 v.

14 BERJAC OF PORTLAND,

15 Defendant.

Case No. C09-0291-JCC

ORDER

16 This matter comes before the Court on Defendant's Motion for Partial Summary  
17 Judgment Dismissing Consumer Protection Act Claim (Dkt. No. 13), Plaintiffs' Opposition  
18 (Dkt. No. 21), and Defendant's Reply (Dkt. No. 24). Having thoroughly considered the parties'  
19 briefing and the relevant record, the Court finds oral argument unnecessary and hereby  
20 GRANTS the motion for the reasons explained herein.

21 **I. BACKGROUND**

22 Berjac of Portland is a company that provides financing for insurance premiums.  
23 Soundview Insurance Agency approached Berjac on behalf of Premier Avia and Pacific  
24 Western, two companies that provided gate and baggage services to airlines at airports  
25 throughout the western United States (Mot. 2 (Dkt. No. 13).) Berjac began financing the  
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1 baggage companies' premiums in 2003. (Opp'n 3 (Dkt. No. 21).) The companies entered a  
2 period of financial difficulty, which lead to a default on their financial obligations to Berjac in  
3 2005. (Mot. 3 (Dkt. No. 13).) After obtaining a security interest in equipment in addition to its  
4 standard financing agreement, Berjac continued to finance the companies' premiums until  
5 2008, when after a number of further financial defaults, Berjac finally ceased providing  
6 financing to the baggage companies. (Mot. 2 (Dkt. No. 13).)

7       Unable to collect an outstanding debt of approximately half a million dollars from the  
8 baggage companies, Berjac attempted to recover the amount from Soundview, alleging that  
9 certain warranties and representations made by Soundview created an obligation to repay the  
10 shortfall. (Mot. 3 (Dkt. No. 13).) Berjac sent a letter to Soundview's principal, Tony Conti,  
11 threatening legal action in Oregon. (Opp'n 5 (Dkt. No. 21).) In response, Soundview filed a  
12 suit in Snohomish County Superior Court seeking declaratory relief and asserting a claim  
13 under Washington's Consumer Protection Act ("CPA"). Berjac removed the suit to this Court,  
14 pursuant to the Court's diversity jurisdiction, and now moves for summary judgment dismissal  
15 of the CPA claim. (*Id.* at 5-6.)

## 16 **II. APPLICABLE LAW**

17       Summary judgment shall be rendered "if the pleadings, depositions, answers to  
18 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
19 genuine issue as to any material fact and that the moving party is entitled to a judgment as a  
20 matter of law." FED. R. CIV. P. 56(c). Rule 56 "mandates the entry of summary judgment, after  
21 adequate time for discovery and upon motion, against a party who fails to make a showing  
22 sufficient to establish the existence of an element essential to that party's case, and on which  
23 that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322  
24 (1986).

## 25 **III. DISCUSSION**

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1 To prevail in a suit alleging a violation of the CPA (WASH. REV. CODE § 19.86.020),  
2 the Plaintiff “must show (1) an unfair or deceptive act or practice, (2) in trade or commerce, (3)  
3 that impacts the public interest, (4) which causes injury to the party in his business or property,  
4 and (5) which injury is causally linked to the unfair or deceptive act.” *Indoor*  
5 *Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 170 P.3d 10, 17 (Wash.  
6 2007). A plaintiff must establish each of these distinct elements in order to prevail. *See*  
7 *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533 (Wash.  
8 1986).

9 Soundview alleges two unfair or deceptive acts or practices under the CPA. First,  
10 Berjac threatened litigation. (Opp’n 9 (Dkt. No. 21).) Second, Berjac “never disclosed to  
11 Soundview that it intended for [the contract] to obligate Soundview to pay any outstanding  
12 premiums in the event the insureds default.” (*Id.* at 10.) Soundview’s claims fail to establish  
13 the barest trace of material fact.

14 This is a dispute over a contract entered into at arms’ length by sophisticated  
15 commercial parties. The dispute, as countless commercial disputes are, was accompanied by  
16 threats of litigation. It is inconceivable that a party might have a claim for unfair or deceptive  
17 acts or practices every time an opponent expressed a disagreement over contractual  
18 interpretation, or resorted to the courts to settle a dispute. Soundview offers no authority or  
19 evidence for the contention that these two commonplace aspects of business negotiation are  
20 unfair or deceptive, and has failed to demonstrate a genuine issue of material fact.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, Berjac's motion (Dkt. No. 13) is GRANTED.

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4 DATED this 2nd day of March, 2010.

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A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

John C. Coughenour  
UNITED STATES DISTRICT JUDGE